

MORGAN MELHUISE ABRUTYN

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Counsel for Defendant, Greenlight Auto Protection, LLC

Our File No.: GMF 35-062 U EA/SME

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

RICHARD M. ZELMA,

Plaintiff,

-VS-

Civil Action No.:

ENTERPRISE FINANCIAL GROUP, INC.,
GREENLIGHT AUTO PROTECTION, LLC,
DOES' (1-5) and ABC CORPORATIONS' (1-
5), each acting individually, in concert or
as a group,

NOTICE OF REMOVAL

Defendant Greenlight Auto Protection, LLC ("Defendant" or "Greenlight") pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, and with full reservation of all defenses, hereby removes this action from the Superior Court of New Jersey, Bergen County, to the United States District Court for the District of New Jersey. In support of this Notice of Removal, Defendant states the following:

Background

1. On April 17, 2015 Plaintiff Richard Zelma ("Plaintiff") commenced this lawsuit against Defendants Enterprise Financial Group, Inc. ("EFG"), Greenlight (EFG and Greenlight are sometimes collectively referred to herein as "Defendants"), Does (1-5) and ABC Corporation in the Superior Court of New Jersey, Bergen County, with the above caption and with Docket Number BER-L-003482-15. Copies of the docket, Summons and Complaint are attached hereto as Composite Exhibit 1. Greenlight was served with the Summons and Complaint on May 19, 2015. The Complaint, which contains three (3) counts, alleges claims against Defendants Greenlight and EFG for monetary damages and injunctive relief for alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 (Compl. ¶ 43-60) and the New Jersey Consumer Fraud Act (Compl. ¶¶ 61-71). Plaintiff contends he received eight (8) unsolicited and prerecorded marketing calls from Defendants.

2. Plaintiff maintains he is entitled to statutory damages under 47 U.S.C. § 227(b)(1)(A)(iii), trebled damages under 47 U.S.C. § 227(b)(3)(C), damages under N.J.S.A. § 56:8-130(a), permanent injunctive relief under 47 U.S.C. § 227(b)(3)(A), and attorneys' fees, if applicable. In his Complaint, Plaintiff specifically waived the right to any award in excess of \$74,500.00.

Basis for Jurisdiction.

3. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. §§ 1331, 1367 and 1441. This action for monetary damages and injunctive relief could have been filed originally in this Court pursuant to 28 U.S.C. § 1331 which provides that federal question jurisdiction exists when an action presents a claim “arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331. Indeed, 28 U.S.C. § 1441(a) permits a defendant to remove a civil action filed in state court to federal court if the action could have been brought in federal court originally. *See Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg.*, 125 S. Ct. 2363, 2366 (2005).

4. In *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012), the Supreme Court, in a unanimous decision, held that federal courts have subject matter jurisdiction over claims alleging violations of the TCPA; *see also Landsman & Funk PC v. Skinder-Strauss Associates*, No. 09-3105, 2012 WL 2052685, at *1 (3d Cir. Apr. 17, 2012).

5. Furthermore, because this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, it also has and should exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the claim brought under the New Jersey Consumer Fraud Act because the claim is so related to the TCPA claims

within the Court's original jurisdiction that they form part of the same case or controversy. Indeed, when state and federal claims are merely alternative theories of recovery based on the same alleged acts, district courts should exercise supplemental jurisdiction over the state law claims. *See Letino v. Fringe Employee Plans, Inc.*, 611 F.2d 474, 479 (3d Cir. 1979).

Pleadings and Process.

6. As required by 28 U.S.C. § 1446(a), Greenlight has attached to this Notice of Removal copies of all state court process and pleadings served on Greenlight (*i.e.*, the Summons and Complaint). *See* Composite Exhibit 1.

Notice Given.

7. Written notice of the filing of the Notice of Removal will be promptly served on the *pro se* Plaintiff, and a copy will be promptly filed with the Clerk of the Superior Court of Bergen County, New Jersey, pursuant to 28 U.S.C. § 1446(d). A copy of the proposed Notice of Filing Notice of Removal *sans exhibit* is attached as Exhibit 2.

Removal is Timely Filed.

8. This Notice has been timely filed within thirty (30) days of service of process of the Complaint and Summons on Greenlight, as allowed by 28 U.S.C. § 1446(b). Indeed, Greenlight was served with a copy of the Summons and the

Complaint on May 19, 2015 which is within thirty (30) days of the filing of this Notice of Removal.

Rule of Unanimity.

9. The rule of unanimity requires that in order for a notice of removal to be properly before the Court, all defendants who have been served or otherwise properly joined in the action must either join in the removal, or consent to the removal. Defendants Greenlight and EFG are the only two (2) Defendants that have been served in this action, and EFG has consented to this Notice of Removal. A copy of EFG's Consent to Removal is attached hereto as Exhibit 3. With respect to Defendants Does (1-5) and ABC Corporations, the unanimity rule is inapplicable as they are unknown defendants. *See Granovsky v. Pfizer*, 631 F.Supp.2d 554, 559 (D.N.J. 2009) ("The unanimity rule may be disregarded where: (1) a non-joining defendant is an unknown or nominal party or (2) where a defendant has been fraudulently joined.").

Venue.

10. Venue in this district is proper pursuant to 28 U.S.C. § 1446(a) because this action is currently pending in the Superior Court of Bergen County, New Jersey, which is included in the District of New Jersey, Newark Vicinage.

Non-Waiver of Defenses.

11. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Greenlight's right to assert any defense or affirmative matter, including without limitation, a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

ACCORDINGLY, this Court has jurisdiction over this matter, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, and Defendant Greenlight Auto Protection, LLC hereby removes this action from the Superior Court of Bergen County, New Jersey, to this Court.

Dated: June 8, 2015

s/Shaji M. Eapen, Esq.

CERTIFICATE OF SERVICE

I, Shaji M. Eapen, Esq., hereby certify that on June 8, 2015, the foregoing Notice of Removal and all exhibits attached thereto, were served via electronic filing with the U.S. District Court for the District of New Jersey, Newark Vicinage and via Federal Express and electronic mail upon *pro se* Plaintiff Richard Zelma, 940 Blanch Avenue, Norwood, NJ 07648, TCPALAW@optonline.net.

s/Shaji M. Eapen, Esq.

MORGAN MELHUISE ABRUTYN

651 W. Mt. Pleasant Avenue, Suite 200

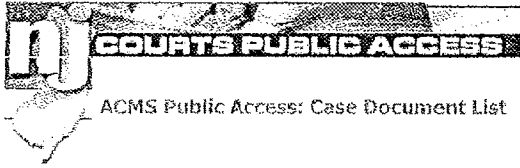
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Fax: (973) 994-3375

E-mail: SEapen@morganlawfirm.com

*Counsel for Defendant Greenlight Auto
Protection, LLC*



Page: 1

END OF LIST

VENUE : BERGEN COURT : LAW CVL DOCKET #: L 003482 15									
CASE TITLE : ZELMA VS ENTERPRISE FINANCIAL GROUP									
SEL	DATE		DOC	DOCUMENT	NON	FILING/TARGET	ATTORNEY	MUL DOC	
	FILED		NUM	TYPE	CONF	PARTY NAME	NAME	PTY	STA
<input type="radio"/>	04	10	2015	001	COMPLAINT	ZELMA	PRO	SE	N

Screen ID: CVM1023 Copyrighted © 2012 - New Jersey Judiciary

Session ID: YTCNDF Case Count: 1

BUILD 2012.1.0.02.09 Timer Count down: 277

EXHIBIT 1

Attorney *in fact*:
Richard M. Zelma, *pro se*
940 Blanch Avenue
Norwood, New Jersey 07648
Tel: 201 767 8153
Attorney for *SELF*

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY

LAW DIVISION

Docket No. BER-L-003482-15

CIVIL ACTION

Richard M. Zelma
Plaintiff
Vs.
ENTERPRISE FINANCIAL GROUP, INC
And
GREENLIGHT AUTO PROTECTION LLC
Defendant(s)

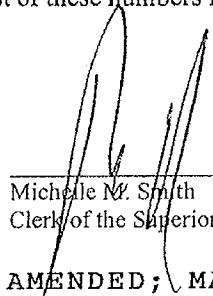
SUMMONS *emendatum*

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within **20** days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.



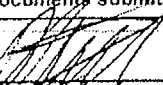

Michelle N. Smith
Clerk of the Superior Court

ORIGINAL ISSUE DATE: April 17, 2015, AMENDED; MAY 14, 2015

SERVE: ENTERPRISE FINANCIAL GROUP. % National Registered Agents, Inc. of NV, 311
S. Division St, Carson City NV 89703.

SERVE: GREENLIGHT AUTO PROTECTION LLC, % Registered Agents Inc, 117 South Lexington Street,
STE 100, Harrisonville, MO 64701

Appendix XII-B1

		CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
		Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.: AMOUNT: OVERPAYMENT: BATCH NUMBER:	
1. ATTORNEY/PRO SE NAME Richard M. Zelma		2. TELEPHONE NUMBER (201) 767-8153		3. COUNTY OF VENUE Bergen	
4. FIRM NAME (if applicable) N/A				5. DOCKET NUMBER (when available) BER-L-003482 15	
6. OFFICE ADDRESS 940 Blanch Avenue Norwood NJ 07648				7. DOCUMENT TYPE Complaint	
				8. JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9. NAME OF PARTY (e.g., John Doe, Plaintiff) Richard M. Zelma Plaintiff		10. CAPTION Zelma vs. Enterprise Financial Group Inc., Joseph Walski, and Greenlight Auto Protection LLC.			
11. CASE TYPE NUMBER (See reverse side for listing) 699 Tort		12. HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		13. IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
14. RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		15. IF YES, LIST DOCKET NUMBERS			
16. DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		17. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN			
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.					
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION					
18. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS			
19. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
20. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION					
 21. DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION			
22. WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?			
23. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .					
24. ATTORNEY SIGNATURE: 					

Side 2

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 288 PRUDENTIAL TORT LITIGATION |
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETHA/AREXIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 284 NUVARING | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 601 ASBESTOS |
| 287 YAZYASMIN/OCELLA | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Slide 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Putative Class Action

☐ Title 59

BERGEN COUNTY COURTHOUSE
SUPERIOR COURT LAW DIV
BERGEN COUNTY JUSTICE CTR RM 415
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 527-2600
COURT HOURS 8:30 AM - 4:30 PM

DATE: APRIL 14, 2015
RE: ZELMA VS ENTERPRISE FINANCIAL GROUP
DOCKET: BER L -003482 15

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON CHARLES E. POWERS

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002
AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

RICHARD M. ZELMA
940 BLANCH AVENUE
NORWOOD NJ 07648

JUBCOS0

PARKING NOTICE

Through July 31, 2015

Visitors to the Justice Center are
directed to the Lot located at
150 River St. Hackensack.
Regular shuttles round trip
available from 7:30 am to 7:00 pm

SUPERIOR COURT BERGEN COUNTY
FILED

APR 10 2015

Laura A. Samaloni
DEPUTY CLERK

RICHARD M. ZELMA
Richard M. Zelma, *Pro Se*
940 Blanch Avenue
Norwood, New Jersey 07648
TCPALAW@optonline.net
Tel: 201 767 8153

Richard M. Zelma Plaintiff Vs. ENTERPRISE FINANCIAL GROUP, a Texas Corporation and GREENLIGHT AUTO PROTECTION LLC and DOES' (1-5) and ABC CORPORATIONS' (1-5); each acting individually, in concert or as a group. Defendants	SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY LAW DIVISION DOCKET NO.: BER-L- 3482-15 <u>Civil Action</u> COMPLAINT FOR STRICT LIABILITY STATUTORY DAMAGES; TCPA TREBLED DAMAGES: STATE LAW TREBLED DAMAGES and PERMANENT INJUNCTIVE RELIEF
--	--

I. INTRODUCTION

1. Plaintiff, Richard M. Zelma, residing at 940 Blanch Avenue, Norwood, New Jersey, by way of Complaint as against Defendants', says as follows:

2. This suit is brought pursuant to applicable authorities; 47 U.S.C. §§227(b)(1)(A)(iii), (the Telephone Consumer Protection Act of 1991) (Hereinafter "The TCPA") and the New Jersey no-call-law, codified under N.J.S.A. §56:8-130(a), which prohibits the initiation of unsolicited

Zelma vs. Enterprise Financial Group, et als

1 and prerecorded marketing calls made by telephone to a
2 persons cell-phone. As set forth below, the Defendants
3 initiated repeated calls to Plaintiff's cell-phone, thereby
4 violating federal and state no-call laws.

5 II. PARTIES

6 3. Richard M. Zelma (hereinafter, "Plaintiff"), is a
7 natural person and senior citizen, residing at 940 Blanch
8 Avenue, in the Borough of Norwood, Bergen County New Jersey
9 07648. Plaintiff maintains cell-phone number [201] 310-0851.

10 4. Upon information and belief, Defendant Enterprise
11 Financial Group Inc. (hereinafter "EFG" or "Defendant") is a
12 corporation organized under the laws of the State of Nevada.
13 EFG transacts or has transacted business in this State,
14 either directly or through the use of agents and/ or the DOE
15 Defendants.

16 5. EFG lists its principal place of business as 122 W
17 Carpenter Fwy, 6th Fl, Irving, TX 75039-2010 and may be
18 served upon its registered agent, National Registered
19 Agents, Inc. of NV, 311 S. Division St, Carson City, NV
20 89703.

21 6. Defendant Greenlight Auto Protection LLC (hereinafter
22 "Greenlight" or "defendant") is a telemarketing call-center
23 organized under the laws of the State of Missouri.
24 Greenlights Secretary of State lists an alleged registered
25

1 agent as; "Registered Agents Inc, 200 NE Missouri Rd. Suite
2 #298 Lee's Summit, MO 64086" but is believed to be a bogus
3 location as no certification for delivery notices have been
4 confirmed.

5
6 7. Defendant Does' and ABC corporations' identities are
7 currently unknown to Plaintiff and such parties will be
8 identified as that information becomes available.

9 III. JURISDICTION AND VENUE

10 8. The facts giving rise to this complaint have their
11 primary effect in the County of Bergen. This Court has
12 specific and general jurisdiction under authority of The New
13 Jersey No-Call-Law codified under the New Jersey Consumer
14 Fraud Act, N.J.S.A. §56:8-130(a), and the TCPA, 47 U.S.C.
15 §§227(b)(1)(A)(iii), where Defendants engaged in
16 substantial, continuous and systematic activities by
17 repeatedly initiating unwanted prerecorded messages through
18 autodialed calls to Plaintiffs cell-phone, in New Jersey,
19 within this County, and the controlling jurisdiction in
20 which the violations occurred.

21 9. As further set out below, the defendant's and each of
22 them deliberately, willfully or knowingly directed their
23 activities towards Plaintiff, annoying his household by
24 purposely soliciting him by telephone for their products,
25

Zelma vs. Enterprise Financial Group, et als

1 goods or services.

2 IV. ACTS OF AGENTS

3 10. Whenever and wherever it is herein alleged that the
4 Defendants, either individually, in concert with others or
5 as a group, did any act defined, described or set-forth
6 below, it is meant the Defendants performed, caused to be
7 performed and/or participated in the act[s] and/or, that
8 Defendants officers, owner[s], member[s] and/or managing
9 members, partner[s], employees, contractors, assigns,
10 successors, predecessors, affiliates, or 'other' agent[s]
11 performed or participated in those acts on behalf of, for
12 the benefit of, and/or under the authority of the Defendants
13 and each of them.

14 V. BACKGROUND

15 11. Plaintiff obtained Cell-phone number, [201] 310 0851
16 in 2003

17 12. Plaintiff's Cell-phone [201] 310 0851 has never been
18 disclosed, provided, offered, listed or exposed to anyone
19 outside his immediate family.

20 13. Plaintiff has/had no prior business relationship with
21 the defendants nor has any existing or anticipated
22 relationship with either or any of the defendants.¹

23 14. Plaintiff never made any phone calls to either or any
24

25 ¹ It should be noted; Plaintiff is currently in litigation with Defendant EFG on a telemarketing related matter with different circumstances. (See; DOCKET NO.: BER-L-20337-14)

1 of the defendants prior to their first call to plaintiffs
2 cell-phone, March 13, 2015

3 15. Plaintiff never inquired about the defendant's
4 products or services nor had any contact of any kind with
5 any of the Defendants prior to their first telemarketing
6 call.

7 16. Plaintiff had no knowledge, never sought, inquired,
8 researched nor had any interest or need in the products or
9 service alleged to be offered by the defendants.

10 17. Plaintiff could not identify the defendants until
11 their name was exposed by defendant Greenlight during the
12 telemarketing calls at issue.

13 VI. FACTUAL ALLEGATIONS

14 18. The Defendants product or service is an extended auto
15 warranty contract.

16 19. The defendants' method to offer their product or
17 service is through the use of prerecorded telemarketing
18 calls and announcements made to unsuspecting recipients,
19 including Plaintiff.

20 20. On the following dates and times, Plaintiffs cell
21 phone rang, displaying the following numbers;

22	1201 492 9149	3-13-15	09:17 AM	Prerecorded Announcement then dropped
23	1201 492 9149	3-13-15	09:35 AM	Prerecorded Announcement then dropped
	1201 492 9149	3-13-15	09:58 AM	Prerecorded Announcement - spoke with agent
24	1201 492 9149	3-13-15	10:12 AM	Prerecorded Announcement - spoke with agent
25	1201 492 9137	3-17-15	09:21 AM	Prerecorded Announcement then dropped
	1201 492 9137	3-17-15	09:29 PM	Prerecorded Announcement then dropped

Zelma vs. Enterprise Financial Group, et als

1201 492 9137	3-17-15	03:05 PM	Prerecorded Announcement - spoke with agent
1201 492 9137	3-17-15	03:39 PM	Prerecorded Announcement - spoke with agent

21. As defined below, each of the defendants eight (8) calls began with a prerecorded announcement which said;

"... [Inaudible] ... your vehicle warranty is about to expire. To hear your options about mechanical breakdown protection and to hear what it covers and costs to put your vehicle back under extended coverage, please press one now."

22. Once the message completed and Plaintiff pressed one, he was connected to a live agent who proceeded to further describe the levels of coverage for the vehicle extended warranty contract.

23. This process is commonly referred to as the 'qualifier', (The DOE defendants); unidentified entities the defendants pay commissions to and purposely hide, who initiate the unlawful calls and subsequently 'qualify' the unknowing recipient into meeting the need of their product or service.

24. Once the process is met, the qualifier 'hot-transfers' the unknowing recipient to another call-center, (Greenlight) who then prepares the paperwork which is then forwarded to Defendant (Enterprise).

25. During the live calls, the Greenlight agents flipped back and forth claiming to actually be Enterprise Financial Group while later in conversation, probably forgot who they worked for and claimed to be Greenlight.

1 26. Throughout this process, the unsuspecting recipient of
2 the unlawful calls is led to believe the caller has his
3 Motor Vehicle records and when questioned, the callers often
4 claimed the records were obtained from the DMV, an auto
5 dealership or manufacturer. Naturally, none of that is true.

6 27. Each of the foregoing phone numbers belong to the
7 Defendants. When calling these numbers, the Defendants do
8 answer. The purpose of this elaborate scheme is to hopefully
9 isolate as many players as possible in the consortium from
10 exposure to liability or potential liability.

11 28. During (live) conversations, Plaintiff asked each
12 agent who the contract or warranty was with and was told
13 "the administrator was Enterprise Financial Group."

14 29. On the dates set-forth above, the Defendants and each
15 of them, did initiate the calls described herein and by
16 doing so, violated the provisions of the TCPA and the New
17 Jersey no-call-law, thus violating Plaintiffs federal and
18 State protected privacy rights.

19 30. The Defendants and each of them, materially
20 participated, approved, directed and stood to benefit from
21 the calls they did initiate to Plaintiffs cell-phone.

22 31. At the time of the subject calls, Plaintiffs inquiry
23 with the New Jersey Department of Law and Public Safety,
24 Telemarketing Registration Division, found that neither of
25

1 the Defendants registered with the Telemarketing
2 Registration Division with their intent to solicit into the
3 State nor did they purchase a no-call list from the State as
4 required under N.J.A.C. §13:45D-3.1, nor did they post the
5 requisite Twenty Five Thousand Dollar (\$25,000.00) bond.

6 VII. THE VIOLATIVE CALLS

7 32. On March 13, 2015, the defendants began to initiate
8 unlawful calls to plaintiff's cell phone, four times that
9 day. Id.

10 33. Absent any business relationship with Plaintiff;
11 absent express written consent from Plaintiff, knowing a
12 similar case is presently being litigated in court, the
13 defendants and each of them knowingly or willfully set forth
14 in a deliberate attempt to solicit Plaintiff again, for an
15 extended auto warranty contract by placing four (4) calls to
16 his cell phone, March 13, 2015.

17 34. The defendants and each of them intensified their
18 efforts and repeated their unlawful acts by making four (4)
19 more calls to Plaintiffs cell-phone, March 17, 2015,
20 attempting to solicit him again for an extended auto
21 warranty contract.

22 35. It was during the March 17, 2015 call at 03:39 PM when
23 Plaintiff spoke with the defendant Greenlights finance
24 manager 'Jessie', who confirmed with Plaintiff that
25

1 Enterprise Financial Group was the administrator who hired
2 "them" to make the calls for the warranty contract.

3 36. When asked, Jessie identified his company as
4 Greenlight Auto Protection in Missouri adding that Joseph
5 Walski was the owner.

6 37. During the March 13, 2015 calls where a live agent was
7 on line, those agents also identified the call center as
8 Greenlight Auto Protection making calls for Enterprise
9 Financial Group but claimed they were prohibited from giving
10 out the name of the call-center owner.

11 38. As a direct and proximate result of the Defendant's
12 actions, Plaintiff sustained damages as that term is defined
13 under the TCPA, including but not limited to additional
14 damages under NJSA §56:8-130(a) for the receipt of unlawful
15 prerecorded telemarketing calls made to a cell-phone.

16 VIII. THIS COURT'S POWER TO GRANT RELIEF

17 39. 47 U.S.C. §227(b)(3)(A) empowers this Court to grant
18 injunctive and other ancillary relief to prevent and remedy
19 any future violation by the Defendants of any provision of
20 law enforced by the FCC or State Law that protects
21 Plaintiff.

22 40. Plaintiff will suffer continual harassment and abuse
23 to his household if the Defendants are permitted to continue
24 to engage in their questionable practices, if Permanent
25

1 Injunctive Relief is not granted.

2 41. Accordingly, Plaintiff has a cause of action against
3 the Defendants and each of them and hereby seeks relief
4 under the TCPA's Strict Liability statutory damage award as
5 well as Permanent Injunctive Relief pursuant to the
6 foregoing as against the Defendants and each of them.

7 42. Further, Plaintiff seeks relief afforded him under the
8 provisions of the New Jersey no-call-law, Codified as
9 N.J.S.A. §56:8-130(a) and the trebled damages awardable
10 thereto under supplemental authority, N.J.S.A. §56:8-19.

11 IX. COUNT ONE
12 PROHIBITED USE OF AN AUTOMATED DIALING &
13 ANNOUNCEMENT DEVICE [A.D.A.D.] SOLICITING A CELL PHONE
14 VIOLATION OF 47 U.S.C. §227(b)(1)(A)(iii)

15 43. Plaintiff hereby incorporates all of the allegations
16 of paragraphs one through forty-two as if set forth in full
17 at length.

18 44. The Defendants and each of them violated the
19 provisions of 47 U.S.C. §227(b)(1)(A)(iii) with their
20 prohibited use of an Automated Dialing and Announcement
21 Device (ADAD) to deliver prerecorded marketing messages to a
22 cell-phone.

23 45. Prior to the calls at issue, the Defendants did not
24 have Plaintiffs prior express written consent as required by
25 law to initiate prerecorded calls to his cell-phone. Id.

1 46. The Defendants and each of them, in active concert
 2 with the other, participated in a prohibited course of
 3 conduct, using an ADAD on March 13, 2015 and March 17, 2015
 4 respectively, and used their ADAD to initiate EIGHT (8)
 5 prohibited prerecorded telemarketing calls to plaintiff's
 6 cell-phone.

7 47. Plaintiff believes and therefore avers the Defendants
 8 Auto-Dialed prerecorded messages were soliciting him to
 9 invest in or purchase the defendants' extended auto warranty
 10 services.

11 WHEREFORE, Plaintiff demands judgment against
 12 Defendants as follows:

13 Award Plaintiff strict liability statutory
 14 damages of \$500.00 for each of the eight (8) calls
 15 material to Count One for a total of Four Thousand Dollars
 16 \$4,000.00.

17 X. COUNT TWO
 18 Award for Statutory Trebled Damages
 19 For Willful or Knowing Violations of
 20 the TCPA, 47 U.S.C. §227(b)(3)(C)

21 48. Plaintiff hereby incorporates all of the allegations
 22 of paragraphs one through forty-seven as if set forth in
 23 full at length.

24 49. On the dates previously set forth, the Defendants and
 25 each of them used a carefully orchestrated scheme, which
 upon information and belief, involves the yet to be

Zelma vs. Enterprise Financial Group, et als

1 identified "DOE" Defendants, in a cell-phone marketing
2 campaign, of which the result was to violate the provisions
3 of the TCPA.

4 50. On the dates set forth herein, the defendants and each
5 of them knowingly or willfully used an affirmative act in an
6 unconscionable commercial practice of deception, fraud,
7 false pretense, false promise and misrepresentation in
8 connection with the sale or marketing of their products or
9 services by soliciting Plaintiffs cell-phone.

10 51. The defendants knowing affirmative act had the
11 potential to mislead or deceive Plaintiff when it was
12 performed.

13 52. On the dates set forth above, the defendants'
14 willfully created a false pretense by implying they had
15 Plaintiffs motor vehicle information, which they did not. Id

16 53. On the dates set forth above, the defendants and each
17 of them knowingly concealed the fact they had no information
18 about Plaintiffs motor vehicle.

19 54. On the dates set forth above, the Defendants and each
20 of them knowingly or willfully initiated prerecorded
21 marketing calls to Plaintiffs cell-phone with their intent
22 to solicit him, using deception and false pretense, knowing
23 they were calling a cell-phone but chose to call anyway.
24
25

1 55. On the dates set forth above, the Defendants and each
2 of them did knowingly or willfully initiate eight (8)
3 prerecorded announcements to Plaintiff's cell-phone with
4 their intent to solicit him, which they did, knowing their
5 calls violated Federal and State laws. Id.

6 56. The defendants foregoing acts or practices as set
7 forth above were known, accepted and approved prior to
8 implementation by each Defendant in their capacity as owner,
9 principal, partner, director, contractor, agent or managing
10 member for each of the other defendants in this consortium.

11 57. The Communications Act of 1934, 47 U.S.C. §312 (f)(1)
12 (of which the TCPA is a part) does not impose a mental state
13 requirement in that it defines willful conduct as; "*the*
14 *conscious or deliberate commission or omission of such act,*
15 *irrespective of any intent to violate any provision, rule or*
16 *regulation.*"

17 58. The defendants knew their intent to call plaintiff's
18 cell-phone and solicit him would violate the TCPA as well as
19 New Jersey's no-call law, but they chose to initiate their
20 unlawful calls anyway.

21 59. The Defendants knowingly or willfully violated 47
22 U.S.C. §227(b)(1)(A)(iii) which provides by statute, a strict
23 liability damage award for each such violation and entitles
24
25

1 Plaintiff to treble damages, of \$1,500.00, for each call and
 2 every violation under Count One.

3 60. Accordingly, the willful intent to violate the TCPA
 4 with direct knowledge of its prohibited acts makes each of
 5 the Defendants liable thereunder for treble the \$500
 6 statutory strict liability damage amount per violation as to
 7 Count One.

8 WHEREFORE, Plaintiff demands judgment against
 9 Defendants as follows:

10 Award Plaintiff strict liability statutory trebled
 11 damages of \$1500.00 for each of the eight (8) calls
 12 material to Count One for a total of Twelve Thousand
 13 Dollars (\$12,000.00).

14 XI. COUNT THREE
 15 ENGAGING IN PROHIBITED ACTIVITY BY
 16 TELEMARKETING A CELL-PHONE WITH PRERECORDED
 17 ANNOUNCEMENTS IN VIOLATION OF N.J.S.A. §56:8-130(a)

18 61. Plaintiff repeats, re-alleges and incorporates by
 19 reference Paragraphs one through sixty above as if set-forth
 20 in full at length.

21 62. The Defendants' initiated eight (8) phone calls to
 22 Plaintiffs cell-phone, in a plan, program or campaign to
 23 solicit him for their extended auto warranty products.

24 63. New Jersey's no-call-law, codified at N.J.S.A. §56:8-
 25 130(a), defines in relevant part; *"No telemarketer shall*
make or cause to be made any telemarketing sales call to a

Zelma vs. Enterprise Financial Group, et als

1 commercial mobile service device of any customer. . . ."
 2 (Cell-phone).

3 64. The Defendants did initiate eight (8) prerecorded
 4 announcements to Plaintiff's cell-phone with the intent to
 5 encourage the purchase of the Defendant's auto warranty
 6 products and services.

7 65. As a result of the Defendants unlawful acts; their
 8 propensity to ignore both Federal and State no-call-laws and
 9 stop their continued use of an ADAD to solicit plaintiffs
 10 cell phone, Plaintiff is again forced to file suit against
 11 the defendants in an effort to stop this continued unlawful
 12 activity.

13 66. Therefore: Defined under supplemental authority of the
 14 New Jersey Consumer Fraud Act, codified at N.J.S.A. §56:8-
 15 19, the Act sets-forth the following;

16 **"§56:8-19 Action ... by injured person; recovery of damages, costs.**

17 Any person who suffers any ascertainable loss of moneys ... as a result of the use
 18 or employment by another person of any method, act, or practice declared unlawful
 19 under this act or the act hereby amended and supplemented may bring an action ...
 20 therefore in any court of competent jurisdiction. In any action under this section
 21 the court shall, in addition to any other appropriate legal or equitable relief,
 22 award threefold the damages sustained by any person in interest.

In all actions under this section, including those brought by the Attorney General, the
 court shall also award reasonable ..., filing fees and reasonable costs of suit."

23 67. By bringing suit, Plaintiff incurred the cost and
 24 expense of filing fees including that of process servers as
 25

1 well as the cost of office material associated with this
2 litigation.

3 68. Furthermore, Plaintiff suffered the cost associated
4 with the loss of billable cell-phone minutes when responding
5 to the defendant's unwanted, uninvited unlawful calls.

6 69. As a result therefrom, Plaintiff suffered an
7 ascertainable loss of moneys, not only in lost cell minutes,
8 but also in the process of preserving his privacy rights.

9 70. The Defendants actions are declared unlawful under
10 the Telephone Consumer Protection Act, 47 USC §227, (TCPA)
11 the act which is hereby supplemented. The defendant's calls
12 are unlawful under the New Jersey no-call-law, codified at
13 N.J.S.A. §56:8-130(a) to which Count Three reflects.

14 71. Therefore, in addition to any other appropriate
15 legal or equitable relief, Plaintiff seeks an award of
16 threefold the damages sustained by him, as a result of the
17 Defendants use or employment of an act or practice declared
18 unlawful under N.J.S.A. §56:8-130(a), by sending prerecorded
19 telemarketing calls to Plaintiff's cell-phone, subsequently
20 forcing Plaintiff to bring this action.

21 WHEREFORE, Plaintiff demands judgment against
22 Defendants under supplemental authority, N.J.S.A. §56:8-
23 19 as follows:
24
25

1 In addition to any other appropriate legal or
 2 equitable relief, award Plaintiff the mandatory threefold
 3 damages for each of the unlawful calls material to Count
 4 Two, for a total of Thirty Six Thousand Dollars
 (\$36,000.00).

5 PRAYER FOR RELIEF

6 WHEREFORE, Plaintiff prays that this Court:

7 (a) Award Plaintiff strict liability
 8 statutory damages of \$500.00 for each of the
 9 EIGHT (8) calls made in violation of the
 10 regulations prescribed under 47 U.S.C. 227(b)(1)(A)(iii)
 11 material to Count One for a total of Four
 12 Thousand Dollars (\$4000.00).

13 (b) Award Plaintiff trebled damages under
 14 authority of 47 U.S.C. §227(b)(3)(C) and defined
 15 within the Communications Act of 1934, 47 U.S.C.
 16 §312(f)(1), administered by the FCC, for the
 17 EIGHT (8) prohibited telemarketing calls
 18 willfully or knowingly made in violation of 47
 19 U.S.C. §§227(b)(1)(A)(iii), as addressed in
 20 Count One for a total of Twelve Thousand Dollars
 21 (\$12,000.00).

22 (c) Award Plaintiff damages pursuant to
 23 N.J.S.A. §56:8-130(a) and its supplementing
 24 authority, N.J.S.A. §56:8-19, where the court
 25

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1 shall in addition to any other appropriate legal
2 or equitable relief, award threefold the damages
3 sustained by Plaintiff for a total of Thirty Six
4 Thousand Dollars (\$36,000.00).

5 (d) Award Plaintiff Permanent Injunctive
6 Relief pursuant to 47 U.S.C. §227(b)(3)(A)


7 (e) In the alternative, award Plaintiff
8 any Other Equitable Relief the Court deems
9 justified to stop the prohibited telemarketing
10 defined and described herein.

11 (f) Award Plaintiff attorney fees if
12 applicable.

13 (g) Plaintiff reserves the right to
14 supplement this prayer, in the event additional
15 violations surface through continuing discovery.

16 (h) Plaintiff waives any award in excess
17 of \$74,500.00, (Seventy Four Thousand Five
18 Hundred Dollars), excluding costs and /or legal
19 fees.

20 Respectfully submitted,

21
22
23 By: 
24 RICHARD M. ZELMA, pro se
PLAINTIFF


25 Dated: April 6, 2015

Zelma vs. Enterprise Financial Group, et als

RULE 4:5-1 CERTIFICATION

Pursuant to the requirements of R. 4:5-1, I certify that the matter in controversy is not the subject of any other Court or Arbitration proceeding, nor is any other Court or Arbitration proceeding contemplated. No other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

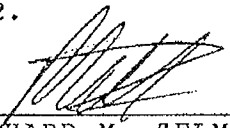
By: 
 RICHARD M. ZELMA, *pro se*
 PLAINTIFF

Dated: April 6, 2015

NOTICE TO ATTORNEY GENERAL
 FOR THE STATE OF NEW JERSEY

NOTICE IS HEREBY GIVEN to the Office of Attorney General for the State of New Jersey pursuant to N.J.S.A. §56:8-20 of the within claim based upon violations of the Consumer Fraud Act and the New Jersey no-call law.

I hereby certify that contemporaneous with the filing hereof, a copy of this pleading has been mailed to the aforesaid Office of Attorney General for the State of New Jersey at the New Jersey State Division of Law, Hughes Justice Complex, 25 W. Market St., P.O. Box 112, Trenton, NJ 08625-0112.


 RICHARD M. ZELMA, *pro se*
 PLAINTIFF

Norwood, NJ 07648

Dated: April 6, 2015

Zelma vs. Enterprise Financial Group, et als

SHAJI M. EAPEN, ESQ. – N.J. BAR ID #022602001

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Counsel for Defendant, Greenlight Auto Protection, LLC

Our File No.: GMF 35-062 U EA/SME

RICHARD M. ZELMA,

Plaintiff,

-VS-

ENTERPRISE FINANCIAL GROUP, INC.,
GREENLIGHT AUTO PROTECTION, LLC,
DOES' (1-5) and ABC CORPORATIONS' (1-
5), each acting individually, in concert or
as a group,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-3482-15

**DEFENDANT GREENLIGHT AUTO
PROTECTION, LLC'S NOTICE OF FILING
NOTICE OF REMOVAL**

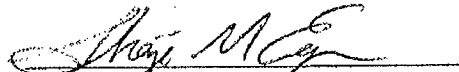
Defendant Greenlight Auto Protection, LLC ("Greenlight"), through the undersigned counsel, hereby gives notice to the Bergen County Superior Court of New Jersey, Law Division, and all parties that on June 8, 2015, Greenlight filed the Notice of Removal attached hereto as **Exhibit A**, in the United States District Court for the District of New Jersey, Newark Vicinage. Pursuant to 28 U.S.C. § 1446(d), removal is effective upon the filing of the Notice of Removal in the United States District Court for the District of New Jersey, Newark Vicinage together with the filing

{01039644}

EXHIBIT 2

of this Notice of Filing Notice of Removal with this Court, and the parties are to proceed no further in this Court unless and until a claim is remanded.

Dated: June 8, 2015


SHAJI M. EAPEN

CERTIFICATION PURSUANT TO RULE 4:5-1(b)

I hereby certify that to my knowledge the matter in controversy is not the subject of any other pending or contemplated court action, nor is it the subject of any arbitration or administrative proceeding. I certify further that no other parties should be joined to the matter.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 4:25-4.

Dated: June 8, 2015


SHAJI M. EAPEN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RICHARD M. ZELMA,

Plaintiff,

-vs-

ENTERPRISE FINANCIAL GROUP, INC.,
GREENLIGHT AUTO PROTECTION, LLC,
DOES' (1-5) and ABC CORPORATIONS' (1-
5), each acting individually, in concert or as a
group,

Defendants.

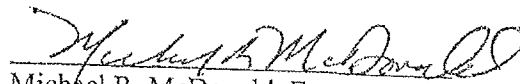
Civil Action No.:

Document electronically filed.

CONSENT TO REMOVAL

Defendant Enterprise Financial Group, Inc. ("Defendant" or "Enterprise"), by and through undersigned, pursuant to 28 U.S.C. §§ 1441 and 1446, and without waiving any defenses or affirmative defenses it may have to the claims asserted by Plaintiff in this action, consents to Defendant Greenlight Auto Protection, LLC's removal of this action from the Superior Court of New Jersey, Bergen County, Case No. BER-L-003482-15, to the United States District Court for the District of New Jersey, Newark Vicinage.

Dated: June 3, 2015



Michael R. McDonald, Esq.

GIBBONS P.C.

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Attorneys for Defendant

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